

Judge rules against Bedford

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Bedford Township has lost its fight in Monroe County Circuit Court over the zoning of 80 acres of farmland off Erie Rd.

Judge Michael W. LaBeau Wednesday ruled that the township's decision to deny a requested rezoning of that landlocked property – sandwiched between the Village Meadows subdivision off Temperance Rd. and another already residentially zoned 80 acres to the north – was unreasonable.

“He found that the township's decision not to rezone was arbitrary and capricious,” township attorney Philip Goldsmith said. “He felt that because the township had rezoned Village

Meadows, that made the determination to deny rezoning for the 80 (Bedford Partners acres) unreasonable. And that it was reasonable to put a subdivision there.

“I knew that was a big hang up for him.”

The judge's ruling – which came only hours after lawyers for both sides completed closing arguments Wednesday – basically means that development company Bedford Partners can proceed with plans to build a 450-home subdivision.

“While it is unfortunate it took a lawsuit to force the township to allow us to develop our land, we look forward to building what we hope will be one

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of the nicest subdivisions in Bedford Township," said Mark Brant, a Bedford Partners principal.

Bedford Partners in 2004 requested rezoning of the property from agricultural to residential to build what will be the township's largest subdivision development.

The company proposed building about 45 homes a year for 10 years. The homes are expected to range in price from \$180,000 to \$350,000, according to Mr. Brant's testimony.

The township twice in 2004 denied the rezoning request. Wednesday's court ruling reverses the township's action.

"The ruling just says that the use is appropriate," said Susan Friedlaender, Bedford Partners' attorney. "It's not a free ride or anything. It's just the use that's been approved. The development still has to follow all the rules."

The platting process of approval must still be adhered to, but the experienced Bedford Partners already has taken much of the guess work out of its proposed development plans.

"The long and short of it is, unless the township appeals and wins ... The best way to put it is that the plaintiff's request was found to be reasonable and allowable," Mr. Goldsmith said. "The whole thing. The swan or the Cinderella or whatever they called it."

During township board consideration of the original 2004 plans, Mr. Brant publicly called the proposal a "swan" and basically told the board if the swan plans weren't approved, Bedford Partners would put as dense a subdivision as allowed - a plan he called "the ugly duckling."

The township has 21 days from the date of the court order's filing - expected within a day or two of today - to file for an appeal. Township Supervisor Walt Wilburn, who

was called to testify in the township's defense, said he was surprised at the ruling.

"I didn't expect that. I'm very disappointed in the court's ruling," he said. "However, I feel that we presented a strong case and we will be looking at all our options."

"I will be talking with the board and our attorneys so we can decide how to proceed."

Day three in the trial began with township attorney David Landry arguing a motion for a direct verdict - basically a motion to throw the case out.

The judge agreed to throw out one of two remaining charges filed by Bedford Partners against the township. Gauging that the "level of review" was too low for the development company's procedural due process and equal protection claims, Ms. Friedlaender on the first day opted to drop pursuit of those allegations.

After Mr. Landry's motion to direct was heard, the judge eliminated the plaintiff's charge of government or regulatory takings - that the township, by rule, had prevented the best use of the property in question.

That left only the substantive due process claim, with which the judge eventually agreed.

"You only need one count to win," Ms. Friedlaender said after the ruling. "The reason we eliminated the first two was because once you get to trial, it's important to limit the issues. You have to decide what are your best and strongest points."

She presented experts in planning, school finance, appraising and engineering. They testified that the township infrastructure could support the 450-home development and that the character of the area surrounding the property was indeed residential in nature.

"I presented a lot of facts," said Ms. Friedlaender, who

also kept Judge LaBeau in agitation throughout the trial.

"Ms. Friedlaender I've let you go for three days in an inappropriate manner," Judge LaBeau told her Wednesday, as she casually addressed a witness, her opponents and the court. "I've given (leeway) because this is a bench trial and there is no jury here but ..."

The previous day, the judge chastised the attorney for not having her case documents in better working order - while she looked for a copy in the township's files.

Wednesday she failed in an attempt to get the court to reconsider its morning ruling that the takings claim was thrown out and then she interrupted Mr. Landry's summation to object that he was arguing points not related to the case at hand.

"Well then you should be glad," Judge LaBeau told her, adding that if it's not appropriate it won't count toward his ruling.

The judge's decision also sets in motion a damages phase of the Bedford Partners lawsuit. A preliminary trial date has been set for 1:30 p.m. Wednesday, at which the parties will consider going back to court - possibly before a jury - to decide whether Bedford Partners is owed any damages.

"If they can establish that any delay in the township action caused them damage," a compensatory award could be entered, Mr. Goldsmith said.

But Mr. Brant and his attorney said that's not a goal of the legal action.

"We're hoping just to resolve it at this point," Ms. Friedlaender said. "As long as the township wants to sit down, I think it could be resolved. No one's looking for blood. That's what's so nice about my client. He's not looking for that. He just wants to build the development. And that makes sense."